

JUL 11 2013
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

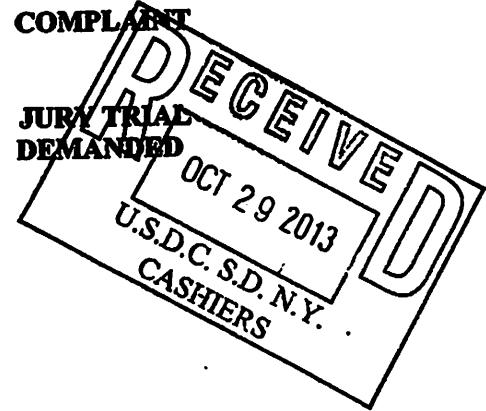
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JERMAINE MAXWELL,

Plaintiffs,

v.

THE CITY OF NEW YORK,
DETECTIVE ANGUS MACKENZIE,
(Shield No. 06284); and POLICE OFFICERS JOHN
DOES (names and numbers of whom are unknown at
present); and other unidentified members of the
New York City Police Department,



Defendants.

X

PRELIMINARY STATEMENT

1. This is an action to recover money damages arising out of Defendant's violation of Plaintiff's rights as secured by the Civil Rights Act, 42 U.S.C. Section 1983, and of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiff was victimized by and subsequent to an unlawful entry and search of his home by police officers. Plaintiff was deprived of his constitutional rights when Defendants unlawfully entered his home, utilized excessive force and caused the unjustifiable arrest and unlawful confinement of the Plaintiff, and maliciously prosecuted Plaintiff Jermaine Maxwell.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. §§1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this

Court by 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) and the aforementioned statutory and constitutional provisions.

VENUE

3. Venue is proper for the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391 (b) and (c).

PARTIES

4. The Plaintiff, Jermaine Maxwell, is a citizen of the United States, and is and was at all times relevant herein a resident of New York, New York.

5. New York City Police Detective Angus MacKenzie, shield #06284, was at all times relevant herein an officer, employee and/or agent of Defendant City of New York [hereinafter "City"] and Defendant New York City Police Department [hereinafter "NYPD"], and within the scope of his employment as such. Detective Angus MacKenzie is being sued in his individual capacity.

6. New York City Police Officers John Does, shield numbers unknown, were at all times relevant herein officers, employees and/or agents of Defendant City and Defendant NYPD, and within the scope of their employment as such. Officers John Does are being sued herein in their individual capacity.

7. At all times relevant herein, the individual defendants, Detective Angus Mackenzie, and Officers John Does were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and/or officers of the NYPD, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. The individual Defendants were each acting for and on

their presence prior to breaking down Plaintiff's door.

15. Upon information and belief, the NYPD officers never knocked or announced Officer Defendants, or consented to their entrance in any way.
14. None of the apartment's residents unlocked or opened the front door for the officers proceeded to unlawfully search and raid the apartment.
13. The officers proceeded to unlawfully search and raid the apartment.
12. At approximately 6:00 a.m., several unidentified officers from the New York City Police Department, including defendant McKenzie, broke down the front door of Plaintiff's apartment, immediately prior to the time of the incident, Plaintiff was asleep in his bedroom.
11. On May 25, 2011, at least four people resided at the aforementioned address.
10. On May 25, 2011, at approximately 6:00 a.m., Plaintiff resided at 158 West 144th, Apartment #5B, New York, New York 10039.

9. On May 25, 2011, at approximately 6:00 a.m., Plaintiff resided at 158 West

STATEMENT OF FACTS

and of the State of New York.

8. Defendant City is a municipality organized and existing under the laws of the State of New York. At all times relevant hereeto, Defendant City, acting through the NYPD, was responsible for the policy, practice, supervision, implementation, training, supervision, and conduct of all NYPD matters and was responsible for the appointment, training, supervision, and conduct of all NYPD personnel. In addition, at all relevant times, Defendant City was responsible for enforcing the rules of the NYPD, and for ensuring that the NYPD personnel obey the laws of the United States and of the State of New York.

9. Defendant City is a municipality organized and existing under the laws of the State of New York. At all times relevant hereeto, Defendant City, acting through the NYPD, was responsible for the policy, practice, supervision, implementation, training, supervision, and conduct of all NYPD officers, agents, and/or employees of the NYPD and incidental to the lawful pursuit of their officers, agents, and/or employees of the NYPD and incidental to the lawful pursuit of their officers, agents, and/or employees of the NYPD, with the power and authority vested in them as behalf of the NYPD at all times relevant herein, with the power and authority vested in them as

officers as officers, employees and/or agents of the NYPD.

26. During the unlawful search, the NYPD officers claimed that they found one (1) container, overturning furniture and destroying property.

25. During this unlawful entry into Plaintiff's apartment, defendants ransacked the apartment, opening doors and closets, entering rooms, opening drawers and other closed ordered another Officer to take him downstairs.

24. When the Plaintiff asked to see a search warrant, a Defendant Police Officer head.

23. Unhappy with the Plaintiff's answer, an Officer Defendant struck Plaintiff in the Plaintiff informed the officers that, to his knowledge, there were no drugs in the apartment.

22. The officer then screamed at Plaintiff, and asked him where the drugs were.

21. The officers proceeded to drag Plaintiff down the stairs to the living room.

bed, rear hand-cuffed him, and searched his person.

20. The defendant officers then grabbed Plaintiff by his shirt and threw him on the or about the face two (2) times.

19. As Plaintiff attempted to comply, one of the defendant officers struck Plaintiff on get on the floor.

18. Officer Defendants pointed their loaded weapons at Plaintiff, shouted at him to and seconds later, NYPD officers barged into his bedroom.

17. At approximately 6:00 a.m., Plaintiff Jerome Maxwell heard a loud disturbance apartment.

16. Upon information and belief, Officer Defendants entered the apartment without property obtaining a search warrant. Furthermore, no exigent circumstances existed that would excuse their entry without property obtaining a warrant or permission from a resident of the

City of New York, the New York City Police Department, Detective Angus MacKenzie and unreasonable searches of the Plaintiff and his apartment as described above, by Defendants the

36. The assaults on the Plaintiff, arrests of the Plaintiff, unlawful entry and motion of the DA and the file was sealed.

35. On July 19, 2011, all charges against Jeromeine Maxwell were dismissed upon under Docket # 2011NY038424, in New York County, Criminal Court.

34. Plaintiff was charged with Unlawful Possession of Marijuana, P.L. § 221.05 approximately twenty-nine (29) hours.

33. In total, Plaintiff Jeromeine Maxwell was in the custody of the police for

32. After arraignment, the judge released the Plaintiff on his own recognizance.

11:00 a.m. the following day, May 26, 2011, at which point he was arraigned.

31. Plaintiff Jeromeine Maxwell remained in Central Booking until approximately in a holding cell.

30. The Plaintiff was subsequently moved NYPD's Central Booking Unit and placed covered in urine. Plaintiff was in that cell for several hours.

29. Plaintiff Jeromeine Maxwell was placed in a dirty cell, the floor of which was

28. Plaintiff was brought to the NYPD Precinct.

Defendant Officers took him into custody and placed him under arrest.

27. Plaintiff did not have any marijuana or illegal substances on his person or in his room. No illegal substances were found on Plaintiff when he was searched by the Defendant Officers. Plaintiff disputes that any marijuana was present in the home. Notwithstanding, Officers took Plaintiff into custody and placed him under arrest.

Dollars (\$230.00) that belonged to the Plaintiff.

marijuana cigarette in an ashtray next the Plaintiff's bed and confiscated Two Hundred Thirty

Officer Defendants was far in excess of their rightful authority as New York City police officers. The arrest of the Plaintiff was made without reasonable or probable cause, and was unlawfully made in the home of the Plaintiff without a warrant or exigent circumstances.

37. The malicious prosecution of Plaintiff Jermaine Maxwell as described above, by Defendants the City of New York and Officer Defendants was far in excess of their rightful authority as well.

38. The use of force on the Plaintiff by Officer Defendants was unreasonable and far in excess of their lawful authority as a New York City police officer.

39. The unlawful entry, unlawful arrest, use of excessive force, and unlawful confinement of the Plaintiff by Defendants caused the Plaintiff to sustain pain and suffering and psychological and emotional trauma.

40. The malicious prosecution of Plaintiff Jermaine Maxwell by Defendants caused him to suffer pain and suffering and psychological and emotional trauma.

FIRST CAUSE OF ACTION

Violation of Plaintiff's Rights under § 1983, U.S. Constitution, and Fourth and Fourteenth Amendments

41. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 40 with the same force and effect as if more fully set forth at length herein.

42. By falsely arresting the Plaintiff without probable cause, and holding him under arrest for an extended and unreasonable period of time, and/or failing to prevent other officers from doing so, the Officer Defendants deprived the Plaintiff of his rights, remedies, privileges, and immunities guaranteed by the Fourth and Fourteenth Amendments of the United States

48. By reason of the foregoing, and by pointing a loaded gun at Plaintiff Jerome Maxwell's head and body, and by assaulting and battering him while he was in custody, the Plaintiff Defendants used unreasonable and excessive force against Jerome Maxwell and/or failed to prevent other officers from doing so, and thereby deprived Jerome Maxwell of his rights, remedies, privileges, and immunities guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution and Laws of the United States in violation of 42 U.S.C. § 1983.

47. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked I through 46 with the same force and effect as if more fully set forth at

SECOND CAUSE OF ACTION

above, the Plaintiff sustained the damages herein before alleged.

45. The Officer Defendants acted willfully, knowingly, and with the specific intent to deprive Plaintiff of his constitutional rights secured by the Fourth and Fourteenth Amendments to the United States Constitution and Laws of the United States in violation of 42 U.S.C. §1983.

46. As a direct and proximate result of the misconduct and abuse of authority detailed

44. The Officer Defendants acted beyond the scope of their jurisdiction, without officers.

individual and official capacities and within the scope of their respective employment as NPPD

Constitution and Laws of the United States in violation of 42 U.S.C. § 1983.

Constitution and laws of the United States in violation of 42 U.S.C. § 1983.

55. The Officer Defendants acted under pretense and color of state law and in their Fourth and Fourteenth Amendments to the Constitution of the United States.

Plaintiff's right to be secure in his home against unreasonable searches and seizures under the caused damage to the Plaintiff's personal property without cause or reason in violation of the 54. Officer Defendants unlawfully entered into the Plaintiff's home and purposefully Plaintiff hereina.

in paragraphs marked 1 through 52 with the same force and effect as if more fully set forth at 53. The Plaintiff repeats, reiterates and alleges each and every allegation contained

~~Violation of Plaintiff's Rights under § 1983, U.S. Constitution, and
Fourth and Fourteenth Amendments~~

THIRD CAUSE OF ACTION

above, the Plaintiff sustained the damages herein before alleged.

52. As a direct and proximate result of the misconduct and abuse of authority detailed U.S.C. §1983.

Amendments to the United States Constitution and laws of the United States in violation of 42 depitive the Plaintiff of his constitutional rights secured by the Fourth and Fourteenth 51. The Officer Defendants acted willfully, knowingly, and with the specific intent to authority of law, and abused their powers.

50. The Officer Defendants acted beyond the scope of their jurisdiction, without officers.

individual and official capacities and within the scope of their respective employment as NYPD 49. The Officer Defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employment as NYPD

U.S.C. §1983.

and detention without probable cause and unlawful search without

(a) encouraged and/or condoned, the use of excessive force, unlawful arrest

61. Under this custom, usage, practice or policy, The City of New York:

Department.

practices, policy or uses of Defendant, the City of New York through the New York City Police without probable cause and unlawful searches without probable cause was pursuant to custom,

60. Individual Defendants, use of excessive force, unlawful arrest and detention

length herein.

in paragraphs marked 1 through 58 with the same force and effect as if more fully set forth at

59. The Plaintiff repeats, reiterates and alleges each and every allegation contained

~~Municipal Liability Claim Against the City of New York
For Failure to Properly Hire, Train, Supervise and Discipline Employees~~

ROUTE CAUSE OF ACTION

above, the Plaintiff sustained the damages herein before alleged.

58. As a direct and proximate result of the misconduct and abuse of authority detailed

U.S.C. §1983.

Amendments to the United States Constitution and laws of the United States in violation of 42

deprive the Plaintiff of his constitutional rights secured by the Fourth and Fourteenth

57. The Officer Defendants acted willfully, knowingly, and with the specific intent to

authority of law, and abused their powers.

56. The Officer Defendants acted beyond the scope of their jurisdiction, without

officers.

individual and official capacities and within the scope of their respective employment as NYPD

about how much force is too much force in a given situation, in what situations should a police

64. Said situations present New York City police officers with difficult judgments

unlawful arrest and detention without probable cause, and unlawful searches.

that is police officers would confront situations that could result in the use of excessive force,

63. Defendant City of New York, through its policymakers, knew to a moral certainty

and Fourteenth Amendments to the Constitution.

plaintiff to be subjected to a denial of his civil right to be free of such actions under the Fourth

without probable cause and unlawful search of the plaintiff's residence and persons caused the

62. Individual Defendant's use of excessive force, unlawful arrest and detention

(f) failed to adequately supervise its police officers in their official duties.

property or person; and

detaining and arresting people, and the proper procedure when searching a

the proper use of weapons including handcuff, the proper method of

Department regarding the use of force, the constitutional limits of force,

(e) failed to provide adequate training to its New York City Police

determinations by the New York City Police Department;

(d) failed to investigate the excessive use of force, unlawful arrest and

Department;

(c) failed to adequately screen applicants to the New York City Police

arresting individuals, and unlawfully searching people and property;

determining individuals without probable cause, falsely accusing and

(b) encouraged and/or condoned the practice of using excessive force,

probable cause;

as well as increase their precinct's arrest numbers.

individual's constitutional rights so that they may obtain evidence and solve crimes more easily,

67. New York City police officers also have a powerful incentive to violate searches within New York City.

excessive force, unlawful arrests and imprisonments, and unlawful numerous complaints and substantiated reports of police officers' use of officers for excessive force and unlawful arrest and imprisonment.

C. similar civil rights actions brought against defendants City and its police stopping, arresting and detaining individuals for probable cause.

b. public reports and articles documenting these deficiencies authored by the New York State Office of the Attorney General, the New York State Committee on Civil Rights, the New York State Defenders Association, The New York Times and several other public agencies and officials. These reports and articles documented the systemic failure of defendants when using force and similar injuries and abuse sustained by people at the hands of New York City police officers.

8. as evidenced by:

66. There is a history of New York City police officers mishandling these situations, difficult.

65. Said difficult judgments are of the sort that training or supervision will make less or person.

officer arrest and detain a person, and in what situation is it proper and legal to search a property

73. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 72 with the same force and effect as if more fully set forth at

Violation of Plaintiff's Rights under § 1983, Malicious Prosecution

ELTH CAUSE OF ACTION

78. The Plaintiff hereby demands trial by jury of all issues properly triable thereby.

JURY DEMAND

above, Plaintiff Jeromeine Maxwell sustained the damages herein before alleged.

77. As a direct and proximate result of the misconduct and abuse of authority detailed York County Criminal Court, all charges against him were terminated in his favor.

76. After Jeromeine Maxwell was forced to defend himself in proceedings in New maliciously, in bad faith, and without probable cause.

75. The Officer Defendants charged Jeromeine Maxwell with this crime falsely, Unlawful Possession of Marijuana.

Plaintiff Jeromeine Maxwell, charging him with the violation of New York Penal Law § 221.05

74. The Officer Defendants maliciously commenced criminal proceedings against Plaintiff herein.

PRAYER FOR RELIEF

WHEREFORE, The Plaintiff prays for relief as follows:

That the jury find and the Court adjudge and decree that the Plaintiff shall recover compensatory damages in the sum of \$5,000,000 against the individual Defendants, Police Detective Angus Mackenzie, Police Officers John Does, The New York City Police Department and the City of New York, jointly and severally, together with interest and costs; and that the Plaintiff recover punitive damages in the sum of \$2,000,000 against the individual Defendants, jointly and severally.

- a. That the Plaintiff recovers the cost of the suit herein, including reasonable attorneys fees pursuant to 42 U.S.C. §1988.
- b. That the Plaintiff has such other and further relief as the Court shall deem just and proper.

DATED: October 24, 2013
New York, New York



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